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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,563	07/18/2003	Andrew S. Janczak	6024	1329

6858 7590 12/07/2005

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EXAMINER	
ALEXANDER, REGINALD	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 12/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/621,563	JANCZAK ET AL.	
	Examiner	Art Unit	
	Reginald L. Alexander	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 October 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-29* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _ is/are allowed.

6)☒ Claim(s) *1-7,15,17,21-24,26,28 and 29* is/are rejected.

7)☒ Claim(s) *8-14, 16, 18-20, 25 and 27* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 17, 21, 24 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 113283.

There is disclosed in the Japanese reference a magnetic treating device comprising: two semi-cylindrical halves 2, each of the halves having a fastening end and a grasping end 4, wherein the grasping end extends from the fastening end and is constructed and arranged for opening and closing the fastening end; a spring mechanism (see translation) connecting the halves; and a plurality of magnets 3 in the halves.

In regards to the use of the device to treat wine, such is intended use and provides no structural limitations to the claims.

In regards to claims 17 and 29, use of the device on the neck of a beverage bottle is intended use and provides no structural limitations. Additionally, it is evident that the device could be fastened to a bottle neck having the appropriate size.

One skilled in the art could place the device on the neck of a wine bottle or wine could be used to flow through the faucet shown in the Japanese reference.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2, 23 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 113283 in view of Burns.

Burns discloses the use of a cushioning layer 24, 26 on an inner surface of a magnetic treating device.

It would have been obvious to one skilled in the art to provide the device of JP 113283 with the cushioning layer taught in Burns, in order to prevent damage to the item upon which the device is fastened.

Claims 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 113283 in view of JP 102859.

JP 102859 discloses a magnetic treating device having tabs (connecting arms) 31, 32 attached to opposed halves, each tab having an aperture at a free end thereof for receiving a connecting member.

It would have been obvious to one skilled in the art to provide the device of JP 113283 with the connecting tabs disclosed in JP 102859, in order to allow for the device to open about a larger area.

In regards to the specifics of the spring element recited in claim 7, it is inherently taught that the spring mechanism in JP 113283 has those features.

Claims 15, 22 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 113283.

In regards to the type of magnet, such would be an obvious matter of design choice, since applicant has failed to disclose that the use of a neodymium iron boron magnet solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the magnets disclosed in JP 113283.

Allowable Subject Matter

Claims 8-14, 16, 18-20, 25 and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed October 24, 2005 have been fully considered but they are not persuasive. The recited use of the device to "treat wine" is an intended use and fails to define any specific structural arrangement which define the device over the prior art of record. Applicant's use of the phrase "constructed and arranged" to further limit the claim language is not structurally definitive. The prior art device could as well be "constructed and arranged" to treat wine without any structural changes.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Reginald L. Alexander
Primary Examiner
Art Unit 1761

rla
December 5, 2005